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ble that some other person was guilty of the offense as it was that defendant was guilty, they must acquit.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 553.]

3. Intoxicating Liquors (§ 239 (1)*)—Misleading Instruction Authorizing Conviction for Possession of Liquors.—In a prosecution for violation of the Prohibition Law, instruction framed under Laws 1918, c. 388, § 17, stating that possession of spirits by any person on the premises mentioned by the evidence was a violation of the law punishable under the indictment, held misleading, in view of a prior instruction that the jury might find defendant guilty, though he did not commit the criminal acts himself, if he aided or assisted some one else in doing them.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 553.]

Error to Hustings Court of Richmond.

Charles Hutzler was convicted of violation of the Prohibition Law, and he brings error. Reversed.

L. O. Wendenburg, of Richmond, for plaintiff in error.

The Attorney General, for the Commonwealth.

ISGETT *v.* ISGETT.

Jan. 22, 1920.

[101 S. E. 788.]

Divorce (§ 133 (1)*)—Evidence Entitling Wife to Divorce on Ground of Desertion.—Evidence in wife's suit for divorce on ground of desertion held to entitle her to decree.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 738.]

Appeal from Circuit Court, Rockingham County.

Suit by Bertie Isgett against J. W. Isgett. Judgment for defendant, and plaintiff appeals. Reversed.

Charles A. Hammer, of Harrisonburg, for appellant.

LANDRUM *v.* TYLER.

Jan. 22, 1920.

[101 S. E. 788.]

1. Easements (§ 8 (2, 3)*)—Permissive Use Cannot Give Easement.—No mere permissive use, however long continued, can ever ripen into an easement by prescription.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 310.]

2. Easements (§ 5*)—Elements of Prescription Stated.—A private right of way over the lands of another by prescription may be ac-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

quired by adverse use and enjoyment under a claim of right, the use being exclusive or exercised independent of the claims of others, continuous, uninterrupted, with the knowledge and acquiescence of the owner of the land, and continued for 20 years.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 310.]

3. Easements (§ 7 (6)*)—Denial of Existence by Owner of Servient Estate Does Not Defeat.—Where title to a right of way had been acquired by prescription long before defendant became the owner of the servient estate, her refusal to acquiesce in the claim of an easement had no effect to defeat the easement.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 314.]

Error to Circuit Court, Hanover County.

Suit by Sallie Tyler against Bessie Landrum. Decree for plaintiff, and defendant brings error. Affirmed.

W. D. Cardwell, of Richmond, for plaintiff in error.

H. Carter Redd, of Beaver Dam, and *S. A. Anderson*, of Richmond, for defendant in error.

SCOTT *v.* RUCKER.

Jan. 22, 1920.

[101 S. E. 789]

Appeal and Error (§ 1108*)—Cause Remanded, Where Order Complaind of Has Become Ineffective.—It appearing on appeal that order complaind of committed an infant to the custody of its mother "for the duration of the present war, or for so long as its father, R., shall remain in the United States army," and it being suggested that the father has been discharged from service in the United States army, and hence that the order is no longer effective, the case will be remanded to the lower court for final disposition according to law.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 632.]

Error to Corporation Court of Hopewell.

Action between Mrs. C. H. Scott and Annie Maye Rucker. From an adverse decision, the former brings error. Cause remanded.

Morris & Williams, of Hopewell, for plaintiff in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.